United Nations A/HRC/36/45/Add.1

General Assembly

Distr.: General
10 July 2017

Original: English

Human Rights Council
Thirty-sixth session
11-29 September 2017
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the human rights to safe drinking water and sanitation on his mission to Portugal

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller, on his mission to Portugal from 5 to 13 December 2016.

GE.17-11506(E)
1711506

Please recycle

Report of the Special Rapporteur on the human rights to safe drinking water and sanitation on his mission to Portugal*

Contents

		Page
I.	Introduction	3
II.	Overview	3
III.	Legal and policy frameworks	4
	A. Legal framework	4
	B. Policy framework	6
IV.	Institutional framework	6
	A. Institutional transformation	6
	B. Private sector participation	10
V.	Human rights to water and sanitation in Portugal	11
	A. Accessibility	11
	B. Quality	12
	C. Affordability	13
	D. Maximum availability of resources	16
VI.	Population groups in vulnerable situation	17
VII.	International development cooperation	17
VIII.	Conclusion and recommendations	18

* Circulated in the language of submission only.

I. Introduction

1. Pursuant to Human Rights Council resolution 33/10, the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller, undertook a joint official visit to Portugal from 5 to 13 December 2016 with the Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (see A/HRC/34/51/Add.2), at the invitation of the Government. The purpose of the visit was to examine the progress made and identify remaining challenges in ensuring the full realization of the human rights to water and sanitation in the country.

2. During his mission he had the opportunity to meet with representatives of the Ministry of Foreign Affairs, the Ministry of the Environment, the Ministry of Education, the Ministry of Health, the Ministry of Labour, Solidarity and Social Security, the Ministry of Finance, the Ministry of the Economy, the parliament, the Office of the Ombudsman, the Court of Auditors, the municipalities of Cabeceiras de Basto and Celorica de Basto, the Portuguese Environment Agency, the Empresa Portuguesa das Águas Livres, Águas de Portugal, the Portuguese Water Partnership, the Water and Waste Services Regulation Authority and the Setúbal Region Intermunicipal Water Association. He visited communities in Loures, Cova da Moura, Amadora, Vidigueira, Cabeceiras de Basto and Celorico de Basto and talked to residents.

3. The Special Rapporteur expresses his appreciation to the Government of Portugal for its cooperation before, during and after the visit. He thanks all those who took the time to meet with him and to help him better understand the situation regarding access to drinking water and sanitation in the country.

II. Overview

4. In 1986, Portugal joined the European Economic Community, which was incorporated into the European Union in 1993. Thereafter, Portugal experienced an increase in economic growth. However, since 2007 Portugal has faced an unprecedented economic crisis. As a result, in April 2011, Portugal requested financial assistance and subsequently, an economic adjustment programme was adopted in May 2011 between Portugal and the European Commission, the European Central Bank and the International Monetary Fund (the troika). The memorandum of understanding and the loan agreement covering the period from 2011 to 2014 were signed thereafter. In June 2014, Portugal exited its three-year economic adjustment programme and is currently under post-programme surveillance until at least 75 per cent of the financial assistance received has been repaid. Among the conditions attached to the loan of €78 billion received by Portugal were a series of austerity measures, which have reportedly resulted in lower social protection and consequently in increased poverty. Social and human rights impact assessments were not conducted prior to the adoption of austerity measures (see A/HRC/34/51/Add.2, paras. 5-10). The memorandum of understanding does not include human rights principles and standards.

5. In general, reforms leading to greater private sector involvement have been imposed by the troika through loan or aid conditionality, debt reprogramming or loan forgiveness, without the proper protection for people living in vulnerable situations. In Portugal, while the memorandum of understanding did not explicitly impose the privatization of water services, it does mention the explicit will of the Government to "accelerate its privatization programme".[1] The Special Rapporteur notes that the economic environment resulting from the reform has also encouraged the national agencies to implement a more rigorous policy of full cost recovery in the water and sanitation sector in Portugal, potentially jeopardizing affordable access to water and sanitation services by the most disadvantaged populations.

[1] See memorandum of understanding, para. 3.31. Available from http://ec.europa.eu/economy_finance/eu_borrower/mou/2011-05-18-mou-portugal_en.pdf.

6. The economic crisis and fiscal adjustment response have led to the emergence of the so-called "new poor" and have resulted in increased poverty, homelessness, dramatically increased youth unemployment, lower social welfare benefits and pensions, and less affordable access to public services and to housing (see E/C.12/2016/1, para 3). While the country is currently in the process of economic recovery, the population in Portugal is still facing serious long-term challenges. Public funds for combating social exclusion and poverty were reduced and in 2014, 27.5 per cent of the Portuguese population were identified as being at social risk or socially excluded.[2] In 2015, the national poverty rate in Portugal was one of the highest in the European Union, at 19.5 per cent, while more than 11 per cent of the total population was at risk of poverty.[3] The economic crisis has also led to high unemployment rates (see A/HRC/34/51/Add.2, paras. 8-9). While there has been a slight decrease in unemployment rates in the past two years, unemployment still remains high, standing at 11.1 per cent in 2016.[4] Those social consequences from economic measures have an impact on access to water and sanitation services.

7. Portugal is a centralized State composed of the central Government, 308 municipalities and two autonomous governments: Azores and Madeira. The autonomous governments of Azores and Madeira each have a system of self-government, with democratically elected bodies and several powers and duties, which include legislative and executive powers (article 6 of the Constitution).[5] However, the regional political and administrative autonomy must be exercised within the overall framework of the Portuguese Constitution (art. 255 (3)) and the international commitments made by Portugal as a State. Accordingly, the autonomous governments, as part of the Portuguese State, have obligations under international human rights treaties incorporated through the national legislation, including the legal framework on access to water and sanitation.

8. During and after his visit, the Special Rapporteur had difficulty obtaining information on the basic data, coverage, water quality, affordability and quality of drinking water in the autonomous regions. Furthermore, he noted that there was a lack of dialogue between the autonomous regions of Azores and Madeira and the central Government of Portugal in the field of water and sanitation.

III. Legal and policy frameworks

A. Legal framework

1. International human rights law

9. At the international level, Portugal has ratified most of the core international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, which stipulate the right to an adequate standard of living including the human rights to water and sanitation.[6] Those rights are explicitly recognized in several international instruments, notably General Assembly resolution 64/292 and Human Rights Council resolution 33/10.[7] Portugal supported and voted in favour of those resolutions and continues to express its international commitment to the human rights to

---

[2] See http://ec.europa.eu/eurostat/statistics-explained/index.php/People_at_risk_of_poverty_or_social_exclusion.

[3] Ibid. See also A/HRC/34/51/Add.2, para. 9.

[4] See www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=274752745&DESTAQUESmodo=2.

[5] *In Portugal, except for issues of defence, homeland security and justice, the governments of Azores* and Madeira exercise autonomous authority in their respective regions.

[6] Portugal has not yet ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

[7] Portugal co-sponsored Human Rights Council resolutions 15/9, 16/2, 18/1, 21/2, 24/18 and 27/7. Portugal also co-sponsored General Assembly resolution 68/157, which was adopted without a vote.

water and sanitation. Portugal thereby affirmed that the right to an adequate standard of living includes the human rights to safe drinking water and sanitation.

10. At the regional level, Portugal ratified the European Social Charter in 1991 and the Revised European Social Charter in 2002. Additionally, Portugal has ratified several international treaties relating to water and sanitation, including the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, in 1994, and the Protocol on Water and Health, in 2006. As a State party to the Protocol on Water and Health, Portugal has the obligation to ensure access to water and sanitation to all and to promote equitable access to water and sanitation for all members of the population, especially those who are disadvantaged or socially excluded.

11. According to the Portuguese Constitution, the rules and principles of international law form an integral part of Portuguese law. The provisions set out in ratified international agreements must come into force in Portuguese domestic law (art. 8) and the provisions of the Constitution and of laws concerning fundamental rights must be interpreted and construed in accordance with the Universal Declaration of Human Rights (art. 16).

2. Constitutional and national law

12. Portugal does not explicitly recognize the rights to water and sanitation in its Constitution. However, the rights to water and sanitation are protected through other rights and principles, such as the principle of equality (art. 13), the principle of universality (art. 12), the right to housing, which includes the requirement for hygienic and comfortable conditions and for the preservation of personal and family privacy (art. 65), and the right to a healthy and ecologically balanced human living environment (art. 66). Furthermore, article 81 stipulates the State's primary duty "to adopt a national water policy, with rational use, planning and management of water resources".

13. Additionally, Portugal has in place legislation that transposes certain aspects of the human rights to safe drinking water and sanitation.[5] The Framework Environment Act (Law No. 19/2014) recognizes water as a fundamental right and notes that "the protection and management of water resources also aims to safeguard the human right to safe drinking water established by the United Nations, as well as universal access to sanitation, which is fundamental to human dignity". Another piece of legislation is the Water Act (Law No. 58/2005) which transposes European Directive 2000/60/EC and affirms two principles that are significant for setting water tariffs. On the one hand, water has social value and must be universally accessible for all basic human needs and it should be socially affordable. On the other hand, water has economic value, and must be used in an economically sustainable way, implying the recovery of costs for water services and the adoption of the principles of the polluter pays and the user pays.

14. With regard to sanitation, the Law on urban wastewater (Decree-Law No. 152/97) aims to provide adequate technical solutions for drainage and urban wastewater collection, treatment and disposal, pursuant to the European Directive 91/271/EEC concerning urban wastewater treatment.

15. During the visit, the Special Rapporteur was informed of several pending bills concerning water that had been proposed by the parliament. He wishes to draw attention to draft law No. 335/XIII/2nd (BE) on the protection of individual and common rights to water, which establishes the fundamental rights to water and sanitation, and also aims to redirect water policy with a view to the equitable enjoyment of these services.[6] The draft was the result of initiatives taken by civil society, particularly the "Water for all" project. The Special Rapporteur welcomes the fact that the bill explicitly stipulates that sanitation is a human right in addition to the right to water. The Special Rapporteur reiterates that the right to sanitation should also be enshrined in national legislation, highlighting in that regard General Assembly resolution 70/169, which recognized the human right to sanitation as a distinct right.

[5] All Portuguese legislation is available from https://dre.pt.

[6] See www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=40745.

16. The Special Rapporteur underscores the importance of explicit legal recognition of the human rights to water and sanitation at the national level. Such recognition will allow for comprehensive legal protection of those rights and will complement the *à la carte* approach according to which only certain principles of human rights are enshrined in existing Portuguese legislation. Furthermore, having a national law is key to ensuring the justiciability of the human rights to water and sanitation. It is crucial that national legislation provides a clear guarantee to individuals and groups who are alleged victims of a violation of their rights to water and sanitation, so that they are able to file a complaint before a judicial body, request legal remedies and have those remedies enforced. The Special Rapporteur emphasizes the international commitment of Portugal to provide access to remedy, as highlighted in the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which it ratified in 2013, and under article 20 of its Constitution.

B. Policy framework

17. In addition to legislative measures, the Government is obliged to adopt administrative, educational, social and other measures to realize the human rights to water and sanitation. Continental Portugal has a master plan on water and sanitation services, which started with the first Strategic Water Supply and Wastewater Sanitation Plan covering the period from 2000 to 2006, and the second plan covering the period from 2007 to 2013. Building on the results of the first plan, the second plan aimed to ensure that 95 per cent of the population had access to public water provision and 90 per cent to sanitation by 2013. As for services management, the second plan aimed for full cost recovery and increased participation of private companies in the sector.

18. The most recent strategic plan covers the period up to 2020. The Special Rapporteur welcomes the fact that the 2020 plan highlights the recognition of the human rights to water and sanitation by the United Nations General Assembly in 2010.[10] The 2020 plan focuses on efficient management of water resources and on issues such as restructuring the sector and financial resources. The Special Rapporteur looks forward to the progress that Portugal aims to achieve in implementing the 2020 plan, particularly in terms of guiding public policy on quality services at a sustainable price. Furthermore, the Special Rapporteur welcomes the fact that the 2020 plan involves a monitoring group composed of various stakeholders, including local government, Águas de Portugal (the State-owned holding company that provides water and sanitation services), civil society and other monitoring groups to facilitate the right to participation for stakeholders and to disseminate information relating to policy formulation.

19. The Special Rapporteur notes that no information on the policy framework of the two autonomous governments has been made available to him.

IV. Institutional framework

A. Institutional transformation

20. After the 1980s, Portugal faced the need to develop standards on drinking water and sanitation services provision. The Portuguese water and sanitation sector reform started in 1993 and resulted in a complex institutional architecture within which multiple actors have different roles.

21. In 1993, Portugal had an underdeveloped water and sanitation infrastructure with 81 per cent of households in Portugal having access to public water supply systems and 68 per cent to wastewater management services. *Portugal experienced institutional fragmentation*, with several public bodies having disparate but overlapping responsibilities in relation to

[10] See www.apambiente.pt/_zdata/Politicas/Agua/PlaneamentoGestao/PENSAAR2020/PENSAAR2020_Relatorio_Vol2.pdf.

access to water and sanitation. Hundreds of small-scale municipalities that carried out the role of water service provider were unable to obtain funding or implement the required investment to improve their services. Furthermore, there was a lack of comprehensive, reliable information to support strategic development, policymaking and decision-making, both at the central and local levels. That subsequently led to a gap in the national strategy to address the issue of access to water and sanitation. In response to those challenges, Portugal has implemented reform in its water sector, which has resulted in institutional and legislative changes.

I. Service management models and service providers

22. The water sector in Portugal is organized into two main levels. The first level, "em alta" or "bulk", includes the activities of water abstraction, treatment and storage, as well as wastewater treatment and disposal. The second level, "em baixa" or "retail", includes the activities of water distribution and provision to individual users, and the collection of wastewater from users.

23. Based on the two levels, the responsibility for water supply and sanitation services is shared between the central Government and the local governments of the municipalities. At the bulk level, there are 11 water service providers and 9 sanitation service providers. Under Decree-Law No. 72/2016, the service provisions at the bulk level are under the jurisdiction of the State through the multi-municipal systems. Under Decree-Law No. 90/2009, at the retail level, there are 301 water service providers and 257 sanitation service providers whose activities fall under the jurisdiction of the municipalities.[31] The provision of water and sanitation services, including the ownership of assets, is by law a public responsibility. However, private operators can participate in drinking water supply and sanitation services through a concession contract to manage the service for a given period of years or by participating in the share capital of municipal companies.

24. In addition to the level at which the water and sanitation service providers engage, the providers are distinguished according to different management models. At the retail level, under Decree-Law No. 194/2009, water provision can follow one of four models: (a) direct management, which can be provided by municipal or inter-municipal utilities; (b) delegated management, where a public company is in partnership with the State; (c) delegated management by a municipal company (with public or mixed capital); and (d) management through concession to private companies. Direct management is the most widespread, covering approximately 70 per cent of all municipalities and about 52 per cent of the total population of continental Portugal. The other three models are predominantly found along the Portuguese coast or in the large urban centres.[32] Similar to water supply, sanitation services are provided using models including direct management, delegated management and management through concession. Direct municipal management is also the most common, providing services to 75 per cent of municipalities and almost 59 per cent of the population of continental Portugal.[33]

25. At the bulk level, multi-municipal systems (regional monopolies) were created, transferring powers and responsibilities from local authorities and their respective management bodies to State-owned public companies, in which municipalities own 49 per cent and the national State owns a stake of 51 per cent through the State-owned holding company, Águas de Portugal. Águas de Portugal was set up in 1993 in order to overcome the problems facing the water and sanitation sector at the time, namely, the fragmented system that engendered a lack of capacity to share expertise and know-how. Through its subsidiary companies, Águas de Portugal designs, builds, operates and manages water supply and sanitation systems in liaison with partner municipalities. In addition to its commercial activity of provision of bulk water, which covers 80 per cent of bulk water in Portugal, the work of Águas de Portugal also concerns public policy aspects of water services. In that regard, the Special Rapporteur reiterates guiding principle 4 of the United

[31] See www.ersar.pt/wp-content/uploads/2016/12/RASARF2016_Volume_1.pdf, p. 45.
[32] Ibid., p. 49.
[33] Ibid., p. 55.

Nations Guiding Principles on Business and Human Rights, which indicates that States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State by requiring human rights due diligence.

26. Another model is where bulk and retail level services are directly managed at the municipal level. The Setúbal Region Intermunicipal Water Association, a regional association with eight municipalities as members,[14] coordinates and promotes projects relating to water abstraction and transportation and distribution of bulk water in the Setúbal peninsula. One of its main aims is to create the Intermunicipal Bulk Water System for the region. The situation in that region is emblematic of the relationship between the various institutional actors in the water sector in Portugal. For instance, the Setúbal Region, through the Intermunicipal Water Association, has refused to join the model in which Águas de Portugal is in charge of the water provision at the bulk level. The Special Rapporteur noted that the municipalities of the region were not comfortable with the decision-making process of the bulk-level management, the lack of transparency in some decisions of the national Government and also the share of revenues in the bulk-level companies. At the same time, the Special Rapporteur expresses concern that those municipalities that opt out from the above-mentioned model are discriminated against when it comes to receiving funds from the central Government and the European Union. The Special Rapporteur notes that only one municipality in the region, that of Almada, obtained funds from the European Union.

27. There is an additional model in which both bulk and retail level water service provisions are operated under the delegated management model. For instance, the Empresa Portuguesa das Águas Livres, a State-owned service provider, operates at the bulk level in the greater Lisbon area and both at the bulk and retail levels in the city of Lisbon.[15]

2. Regulation

28. In continental Portugal, the Water and Waste Services Regulation Authority was established in 2009, aiming to regulate the provision of services in terms of quality and economic performance, as well as addressing consumer complaints. The regulatory responsibilities of the Authority were extended to include defining the principles of tariff regulation, notably demanding economic and financial cost recovery, maintaining affordability of services, including through social tariffs, promoting equity in tariff structures and promoting transparent tariff setting procedures.[16]

29. In Azores, the Water and Waste Services Regulation Authority for Azores is operational and is in charge of drinking water quality surveillance and other activities relating to water, sanitation and solid waste management.

30. Throughout his visit, the Special Rapporteur learned about the work of the Water and Waste Services Regulation Authority in relation to standard-setting, periodic monitoring of the quality of water and sanitation services, and recommendations for water and sanitation providers. The Special Rapporteur acknowledges the work of the Regulation Authority as a good practice and a reference model for regulation within and outside of Europe. However, in his opinion, there is room for improvement by introducing some elements of the human rights to water and sanitation in regulation in a more appropriate way. In particular, affordability is a normative content that requires more attention from the Regulation Authority. On the one hand, it is necessary to establish an adequate indicator for monitoring and reporting the actual status of affordability in the access of services. The current indicator, which considers the average income in the municipalities, is far from capturing the economic burden on the poorest in the population and those in vulnerable situations. On the other hand, with a view to protecting those who are economically unable to pay for water and sanitation services, guidance for the water and sanitation service providers should be issued and mechanisms for the protection of those groups should be implemented. Furthermore, the Special Rapporteur finds that a closer look at policies concerning disconnection of water and sanitation services is necessary.

[14] Alcochete, Almada, Barreiro, Moita, Palmela, Seixal, Sesimbra and Setúbal.

[15] See www.esgra.pt/wp-content/uploads/2016/12/RASARP2016_Volume_1.pdf, p. 45.

[16] See Decree-Law No. 277/2009, which was subsequently replaced by Law No. 10/2014.

31. Regulators, as part of public authorities, must act in accordance with the provisions of the international human rights treaties to which Portugal is a party. Their role also includes ensuring human rights compliance on the part of the municipalities and other entities that they regulate (see A/HRC/36/45). The Special Rapporteur urges the national regulator to ensure that its own policies, procedures and activities comply with the international human rights obligations of Portugal.

3. Complexity in the Portuguese water sector

32. During his visit, the Special Rapporteur observed several layers of tensions within the Portuguese water and sanitation sector. He noted that the institutional reform in the water sector that has been implemented in Portugal over the past two decades is facing challenges due to those tensions, especially with regard to the decision-making process involving different institutional actors. All actors that are part of the institutional framework of the water and sanitation sectors are tasked with key roles and responsibilities in respecting, protecting and fulfilling the human rights to water and sanitation. Therefore, tensions among those actors may have a negative impact on how they carry out their operations and their level of success in reaching their goal of providing water and sanitation services to the population. That in turn may affect or otherwise harm the enjoyment of the human rights to water and sanitation. The Special Rapporteur highlights the fact that such tensions could become the root cause of situations that require attention under the human rights framework. In particular, the Special Rapporteur notes that the affordability of water and sanitation for the most vulnerable populations, including the "new poor", is a relevant representation of that situation.

33. Firstly, the Special Rapporteur observed that the tensions between the roles of the bulk providers and of those responsible for retail provision had been present since the implementation of the reform and that they remain strong. The resistance of a number of municipalities to integrate into the bulk provision system has resulted in the coexistence of different models for the provision of water supply services. The Special Rapporteur finds that, while that diversity is not necessarily problematic, it seems to create institutional asymmetries, different rights for different providers and, most significantly, different conditions of access to the services by the population. The Special Rapporteur notes that the differentiated treatment of providers affected municipalities' ability to access funds from the central Government and the European Union, thus negatively affecting the expansion of the infrastructure of the water and sanitation network. Another complaint that the Special Rapporteur came across is that some municipal authorities felt they did not have a free and independent voice in decision-making processes regarding the bulk provision of water and sanitation even when they are shareholders in the bulk provider corporation.

34. One aspect of those tensions was the resistances of municipalities, mainly in joining the bulk-level providers. In addition to the situation identified in the Setúbal Region, the Special Rapporteur visited the region of Porto and observed how, at times, small municipalities negatively viewed the model of splitting the provision in bulk and retail. In one of the sites visited, local authorities explained that the municipality refused to join the bulk-level service provider and were proud of managing a municipal service for water and sanitation, both at the bulk and the retail levels. In another municipality, the Special Rapporteur observed the discontent of the local authorities after they had joined the bulk-level provider the previous year, as the agreed investments had not been implemented and there was an increase in tariffs, which had not been stipulated in the contract.

35. A second layer of tension was observed between local authorities and the central Government, in particular, the degree of centralization or decentralization of water provisions, as well as the roles of government at both the central and the local levels. The Special Rapporteur emphasizes that institutionalized and constructive cooperation on human rights between the central and local governments can have a positive impact on the level of implementation of the international human rights obligations of the State (see A/HRC/30/49, para. 21). The primary role to respect, protect and fulfil human rights lies with the State, that is to say, the central Government, local authorities and the autonomous regions of Azores and Madeira. The Special Rapporteur notes the need for the Government of Portugal to stipulate explicit legal provisions that oblige local authorities and the

autonomous governments to realize the human rights to water and sanitation. Improved communication and collaboration between all levels of government will lead to improved human rights results.

36. Another dimension of tension was observed around the independence of the Water and Waste Services Regulation Authority, whose role was at times challenged by the central Government and some local authorities. While the central Government wishes to play a larger role in key decisions, which may be essential for reconciling water policy with social and public policy, local authorities argued that their autonomy in providing essential water and sanitation services was sometimes undermined. In meetings with the central Government, the Special Rapporteur heard the view that the pricing system should be changed in order to ensure more equitable payment between people living in smaller communities, who were paying more due to higher retail tariffs, and people living in larger cities who potentially pay less for water and sanitation services. He also heard the view that the Ministry of the Environment should play a role in tariff setting, together with the Water and Waste Services Regulation Authority.

37. Given the above-mentioned tensions, the Special Rapporteur urges the Government of Portugal to conduct a comprehensive assessment of the institutional arrangements from a human rights perspective and with the active, free and meaningful participation of all stakeholders. The institutional framework of the Portuguese water sector and possible reforms, for instance, the 2016 National Commitment for the Sustainability of Public Water Services (see paragraph 58 below), need to take into account equality and non-discrimination in the enjoyment of the human rights to safe drinking water and sanitation, ensuring sustainability of services.

B. Private sector participation

38. Until the 1990s, Portuguese legislation limited the participation of private companies in the water sector. Subsequently, the Portuguese water sector has been reshaped by a legal framework that affirmed privatization as a guiding principle of water provision in Portugal (Decree-Law No. 372/93). During the 1990s, the first generation of concessions mainly placed the burden of investment in infrastructure on the conceding entity. The participation of private companies grew during the 2000s, which led to the second generation of concessions, in which investments in infrastructure was the responsibility of the concessionary company.

39. In 2013, 19 public-private partnership municipal water concessions out of 27 in total were audited by the Portuguese Court of Auditors (Tribunal de Contas), a high court that is responsible for external oversight and auditing of the use and management of public expenditure. The focus of the review was the regulation and management of concessions for water supply services at the retail level. The Court aimed to examine the activity of the Water and Waste Services Regulation Authority as the regulator of the concession, identify the processes of contract revision, identify public spending involved in each concession and assess the effectiveness of concessions in terms of the quality of services.

40. Among its conclusions, in its first report of March 2014, the Court concluded that the majority of concessions consistently benefited the private sector to the detriment of municipal budgets and individual consumers. That was due to a lack of contractual provisions that would pass the risks of financial non-sustainability (such as those relating to the market, tendering, finances, construction and exploitation) on to the private parties, hence leaving those risks to be assumed by the public partner.[17] Furthermore, some contracts included clauses that guaranteed the private partner coverage from financial risks or even from operational risks resulting from increasing maintenance costs.

[17] *Tribunal de Contas, 2014, p. 8. Available from* http://www.tcontas.pt/pt/actos/rel_auditoria/2014/2s/audit-dgtc-rel003-2014-2s.pdf.

41. Certain contractual clauses and legal requirements potentially favour private companies, particularly for termination or amendment of concession contracts.[18] For instance, Decree No. 194/2009 establishing the judicial regime of municipal services for water supply, sanitation and solid waste management (art. 54) stipulates that the municipality can demand to lower tariffs when the internal rate of return to the private stakeholders reaches twice the amount established as a base profit in the concession contract. It was brought to the Special Rapporteur's attention that municipalities often lacked the technical and negotiation skills required to defend their financial interests, including those of individual users. The Special Rapporteur is concerned about the unbalanced bargaining power between the private companies and the municipalities and the negative impact it has on the affordability of water and sanitation.

V. Human rights to water and sanitation in Portugal

A. Accessibility

1. Access to water and sanitation

42. At the beginning of the 1990s, 89 per cent of the population had access to piped water supply services.[19] Coverage increased to 95 per cent in 2011, reaching the goal identified in the second Strategic Water Supply and Wastewater Sanitation Plan. According to the 2011 census, which includes the autonomous regions of Azores and Madeira, 3,565,990 housing units had access to a water supply from a public network, and 405,843 units from individual solutions. It was reported that 22,294 housing units did not have any water supply. A more recent survey by the Water and Waste Services Regulation Authority, in 2015, showed that 96 per cent of housing units in continental Portugal had access to services from the public water supply system, with most of the remaining situations solved through individual solutions, such as a private well or borehole.

43. The Special Rapporteur notes that, in addition to connections to piped network and communal or shared facilities, individual on-site solutions may be acceptable (see A/70/203, paras. 69-71). At the same time, he emphasizes that the State has the obligation to ensure that individual solutions meet all the normative content of the human rights to water and sanitation. For instance, the water from individual solutions needs to be accessible continuously and the quality of water from wells or boreholes must meet the official standards and must be protected from animals and other sources of contamination.

44. Portugal also showed improvement in the area of sanitation. There was an increase in access to public sewerage systems from 60 per cent in 1993 to 83 per cent in 2015. The majority of the remaining situations were solved through individual solutions such as septic tanks. More specifically, according to the 2011 census, 3,931,508 housing units in Portugal had flushing toilets, while 26,609 housing units did not contain a toilet. The census also showed that 3,080,452 households had access to a sewerage system from the public network, while 20,257 households did not have access to any sewerage system.

45. The Special Rapporteur underscores that those individual solutions for sanitation may be acceptable (see A/70/203, paras. 56-60), if they are well constructed and maintained. The State should ensure the proper protection of human health and the environment, as well as affordable costs for latrine and tank maintenance.

46. The Special Rapporteur acknowledges the impressive progress made by Portugal, often referred to as "the Portuguese miracle", in the water and sanitation sector. He congratulates Portugal on that achievement, but at the same time highlights the fact that there are still challenges in order for the Portuguese miracle to be complete. For instance, despite the reported wide coverage of sanitation services, the Special Rapporteur learned

[18] Ibid., paras. 36 and 44.

[19] United Nations Children's Fund (UNICEF) and World Health Organization, "Progress on sanitation and drinking water: 2015 update and MDG assessment", 2015, annex 3, p. 70.

that there are still whole population groups that do not have access to those services. In the case of the population living in *ilhas*[20] in Porto, the Special Rapporteur reiterates the concern of the Special Rapporteur on the right to adequate housing regarding their inadequate living conditions, particularly the ad hoc sanitation facilities that are sometimes outside the homes or without doors for privacy or a place to wash (see A/HRC/34/51/Add.2, paras. 45-48). Similar concerns relate to the situation of the Roma population, such as the people he encountered in Amadora. The Special Rapporteur encourages the municipalities to provide support for the construction and maintenance of solutions for sanitation for those who are in vulnerable situations, including people living in informal settlements and the homeless.

47. Furthermore, for both water and sanitation, the disparity between urban and rural areas is still high. According to the 2011 census, for every one housing unit in an urban area that did not have access to a water supply, a sewage system and a toilet, there were three households in a rural area.

2. Situation in educational and public institutions

48. Water and sanitation services should be accessible in public institutions such as health facilities, educational institutions and workplaces. Decree-Law No. 243/86 requires that access to water and sanitation services be provided in schools, health facilities, prison facilities and, in general, all public buildings. It specifically requires that sanitary facilities possess at least one fixed toilet (or Turkish squat style for men) per floor or per 25 male workers and 15 female workers. It further requires that sanitary facilities must have running water and be connected to a sewerage system or adequate septic tank and be equipped with non-irritant soap and, ideally, automatic hand-dryers or paper towels.

49. The Special Rapporteur notes the assessment of the Ombudsman's Office regarding the improved sanitary facilities in prisons and juvenile detention centres. Over the past few decades, there have been positive developments in prisons in Portugal in terms of water supply and sanitation, both in cells and in other places of confinement, with the complete eradication of the use of the "toilet bucket".

B. Quality

50. The normative content of the human right to water requires water to be of quality and safe, so that its consumption and use do not adversely affect human health. Sanitation services must be hygienic and prevent the contact of faeces with humans, animals and insects.

51. In 1993, the drinking water quality levels in the country were low, with only 50 per cent of households with access to controlled drinking water of good quality. Following the reform in the water sector, there was a significant improvement in the quality of drinking water, with 99 per cent of water complying with the national standards in 2015.[21]

52. The regulatory system for drinking water quality in Portugal is established under Decree-Law No. 306/2007,[22] which transposes European Drinking Water Directive 98/83/EC. The law is intended to protect human health from the effects of possible contamination and establishes the criteria for managing a public drinking water supply system. Furthermore, it defines the competence of various actors in relation to water quality surveillance, including water service providers, the Water and Waste Services Regulation Authority and the health authorities. The Water and Waste Services Regulation Authority implements the mechanisms and tools to ensure compliance with the legal requirements by

[20] *Ilhas* are a unique form of housing found only in Porto. Established in the nineteenth century for workers, the miniature homes, measuring on average 16 m^3, house some of the poorest families in Porto. Hidden from view, the *ilhas* are located down narrow lanes. There are 957 of those housing arrangements scattered throughout Porto.

[21] See www.ersar.pt/en/the-setor/sector-report.

[22] That Law replaced Decree-Law No. 243/2001.

compelling all drinking water suppliers to develop a drinking water quality control plan. The role of the health authorities is to undertake sanitary surveillance in addition to the drinking water operators by performing monitoring and official quality control. The health authorities are also in charge of conducting risk analysis in cases of non-compliance, defining any risks associated with the protection of human health and the procedures to minimize or eliminate those risks.

53. In relation to the possible health risks relating to consumption of tap water, Portuguese law requires that every provider has 24 hours to communicate any non-compliance using the Water and Waste Services Regulation Authority portal tool, allowing the Regulation Authority and the health authorities to proceed with an immediate evaluation. Besides registering non-compliant cases, the provider has to register the causes, the remedial actions and the results of verification analyses to evaluate the efficacy of remedial actions.

54. Furthermore, the Ministry of Health manages epidemiological surveillance based on electronic online software for national notifiable infectious diseases in 85 per cent of Portuguese health-care centres and hospitals.[23] The national epidemiological surveillance system facilitates investigation procedures relating to water-related disease and the identification of causalities. Following a notification from the system, local health authorities conduct epidemiological investigation for every case of water-related disease and register related information in the system.

55. While the Special Rapporteur recognizes the progress made in terms of the quality of drinking water and the monitoring processes, he nonetheless wishes to highlight the fact that there is still a gap to be filled. During his visit, the Special Rapporteur witnessed the pride of some officials with regard to the recent progress in water quality control, asserting that Portugal "currently has no more water-related diseases". That statement, however, contradicts data from the epidemiologic surveillance system, which shows a number of remaining cases of diseases that may be linked to drinking water supply. Furthermore, the statement is not compatible with the situation of almost all countries in the world, where cases of water-borne disease, particularly diarrhoea, are identified from time to time. The Special Rapporteur notes that the assessment of a good performance of the service providers in ensuring safe drinking water quality should not be a reason for the Government to neglect the rigorous water quality and epidemiological surveillance. That is relevant both to areas supplied by networked systems that risk facing occasional outbreaks and to individual solutions that are not usually monitored or supported by the State.

56. In addition, the Special Rapporteur observed that Portugal lacks a proper mechanism for providing access to information on drinking water quality for users. Although information is available on websites, he recommends setting up a more proactive system, for instance, including regular information on water bills, as the Water and Waste Services Regulation Authority has been recommending since 2010.

C. Affordability

57. Affordability, as a human rights criterion, requires that the use of water, sanitation and hygiene facilities and services is accessible at a price that is affordable to all people. Paying for those services must not limit people's capacity to acquire other basic goods and services guaranteed by human rights, such as food, housing, health, clothing and education. Affordability standards must be considered together with standards for an adequate quantity and quality of water and sanitation to ensure that human rights standards are met (see A/HRC/30/39, para. 25).

58. The most recent annual report of the Water and Waste Services Regulation Authority notes that on average, drinking water service charges represent 0.4 per cent of the average household disposable income, whereas sanitation service charges represent 0.3 per cent. In relation to standards regulating the affordable charges for water and sanitation

[23] See www.dgs.pt/servicos-on-line1/sinave-sistema-nacional-de-vigilancia-epidemiologica.aspx.

services, the Special Rapporteur reiterates that it is not appropriate to set a generally applicable affordability standard at the global or national levels, and much less for one to be set by one stakeholder in the water and sanitation institutional framework. Any such standard would be arbitrary and could not reflect the challenges people face in practice and the context in which they live, including how much they need to spend on housing, food and realizing other human rights. The affordability of water and sanitation services is highly contextual, and Portugal should therefore determine affordability criteria at the national and local levels, adhering to human rights principles, particularly in terms of participation (see A/HRC/30/39, para. 28). The Special Rapporteur emphasizes that States and water and sanitation providers should set policies that reconcile affordability and financial sustainability as part of their financial management. In Portugal, the Special Rapporteur observed that financial sustainably in relation to affordability is by far the priority concern of the governmental actors in the water sector. In 2016, the Minister of the Environment presented the National Commitment for the Sustainability of Public Water Services, which aims to strengthen and harmonize the mechanisms relevant to ensuring affordable water services by, for instance, setting a minimum threshold for access to water services, and establishing special tariffs.

59. The normative content of affordability should be a priority in the agenda of the Portuguese water and sanitation sector and mechanisms should be established to identify the specific needs of groups that live in vulnerable situations, including rural populations, the homeless, the Roma population and the so-called "new poor".

1. Tariff-setting

60. Setting tariffs for retail water and sanitation services remains a municipal decision in Portugal. However, the decision is not entirely discretionary and has to comply with applicable legal and regulatory provisions. Non-binding tariff regulations regarding the water tariff in Portugal are defined by the regulator, the Water and Waste Services Regulation Authority in continental Portugal, and in Azores, by the Water and Waste Services Regulation Authority for Azores. In continental Portugal, the Water and Waste Services Regulation Authority issued a recommendation in 2009 relating to price regulations, asking water utilities to continue to reflect, in tariff structures, the "principle of economic accessibility, according to which the tariffs should consider the financial capacity of users, contributing to the progressive universal access to water services". The Water and Waste Services Regulation Authority for Azores also submitted a recommendation for a tariff regime in that region, which contained recommendations that would facilitate the implementation of social tariffs for disadvantaged or large families.[24]

61. Furthermore, those non-binding recommendations have emerged in parallel to legislation that reinforced the cost recovery principle in the water and sanitation sector. For instance, the Water Law (Law No. 58/2005) and the Decree-Law on the economic and financial framework of water resources (Decree-Law No. 97/2008) provide that the tariff scheme for water services ensures the gradual recovery of the initial investment and new investments in expansion, modernization and maintenance of the infrastructure.

62. That leads to the situation where investment is necessary but often affects the capacity of the water providers to ensure and uphold social responses to situations of social and economic need. The Special Rapporteur heard testimonies that the cost recovery principle adds pressure for an adjustment in tariffs by water utilities, which has a potentially negative effect on economic accessibility on the part of consumers.

2. Special tariffs

63. Measures that allow low-income users to access water services exist in Portugal. The 2017 State Budget Law, approved after the Special Rapporteur's visit (Law No. 42/2016), authorizes the Government to establish a legal regime for the automatic attribution of a social tariff for the provision of water services to lower income consumers, namely to

[24] See http://www.azores.gov.pt/NR/rdonlyres/AC7FEBE0-8FF-4B35-B8DF-4EDC8D2C2AE7/907603/Recomenda%C3%A7%C3%A3otarif%C3%A1ria2.pdf.

persons benefiting from old-age social pensions, solidarity supplements for the elderly, social integration incomes, unemployment social benefits, family allowance and disability social pensions. Consumers with an annual income under €5,808 are also eligible to benefit from the social tariff. The Special Rapporteur welcomes the inclusion of that provision in the annual budget. It is in line with the need to uphold the dignity of those who would otherwise have to request their inclusion in the system and will increase the number of people who will benefit from the social tariff.

64. However, the Special Rapporteur notes that the automatic attribution of the social tariff should be complemented by implementation measures at the central and local government levels and urges the Water and Waste Services Regulation Authority, the Ministry of the Environment and other relevant institutions to strongly advocate for that to take place. Furthermore, he notes that the implementation of the automatic attribution of the social tariff depends heavily on the flow of personal data, such as individuals' incomes, between the social security services, the tax and customs authority and the general department of local municipalities. The Special Rapporteur looks forward to receiving information regarding the coverage and application of the social tariff and on how the mechanism is developed, taking into consideration the need to balance on the one hand, the use of personal data in order to automatically apply the social tariff and on the other hand, individuals' right to privacy regarding their personal data. Additionally, the Special Rapporteur stresses the importance of disseminating information regarding existing practices, policies and resources that promote economic access to water and sanitation.

65. Another type of special tariff is the family tariff, which is aimed at ensuring that the higher consumption of water resulting from the size of the household is not billed at higher levels. The application of the family tariff varies from provider to provider. For the Empresa Portuguesa das Águas Livres, family units consisting of five or more people are eligible for the family tariff.[25] In order to benefit from the family tariff, consumers are required to present either their annual income tax declaration showing proof of household size or their Large Family Card. According to the definition applied by the Portuguese Large Family Association (Associação Portuguesa de Famílias Numerosas), such families have at least three children.[26] The Special Rapporteur recommends flexibility in interpreting and applying the size of family as in some cases, due to financial vulnerability, one household may be occupied by five or more adults.

66. While the majority of the Portuguese population enjoys affordable water and sanitation services, the Special Rapporteur was informed that the so-called "new poor" pay high water tariffs in comparison to their income. For instance, some population groups have experienced sudden salary cuts or drops in pensions, or have lost their jobs. Those sudden changes in the financial status of the "new poor" have resulted in their inability to pay for their water services, while at the same time they do not qualify for the social tariff for water services, which are based on the tax return from the previous year. The Special Rapporteur heard testimonies of adults who, during the financial crisis, were unable to stay in their own homes and had to move in with their parents. In such cases, where family tariffs applied only to families with children, they were not qualified to benefit from family tariffs. The Special Rapporteur emphasizes that social tariffs for water and sanitation services should be flexible and should be adapted to unforeseen situations.

3. Disconnection in case of incapacity to pay

67. The affordability of water and sanitation services and disconnections are inextricably linked. In many instances, the failure to pay for services leads to disconnection. Disconnection of services on the grounds of economic incapacity is a retrogressive measure and constitutes a violation of the human rights to water and sanitation, according to the Committee on Economic, Social and Cultural Rights (see the Committee's general comment No. 15 (2002) on the right to water, para. 44 (a)). Disconnections are only permissible if it can be shown that households are able to pay but are not paying.

[25] See www.epal.pt/EPAL/en/menu/customers/tariff/special-tariffs /special.

[26] See www.apfn.com.pt/faqs.php.

68. In Portugal, it is legal to disconnect water services if adequate procedures are followed. In the case of disconnection due to late payment, the service provider must inform the user in writing at least 20 days prior to the scheduled disconnection date.[27] In the prior written notice, in addition to justifying the reason for the suspension of services, the provider must inform the users of the means at their disposal to avoid disconnection (Law No. 23/96, art. 5). When the service has been suspended due to non-payment, several water providers offer options for debt settlements, including payment by instalments.

69. According to analysis carried out by the Water and Waste Services Regulation Authority, the great majority of disconnections are not the result of unaffordable bills, but other factors, such as users moving to another address and failing to cancel the service, or forgetting to pay, making disconnection legally appropriate. A pilot study conducted by the Water and Waste Services Regulation Authority in 2015 involving the municipalities of Loures, Mafra and Odivelas aimed at understanding more about disconnections and the reasons for late payments, taking into consideration the specific legal, economic, social and technical conditions in each context. According to the study, the main reasons were not linked to the affordability or otherwise of the water bills.

70. Nonetheless, the Special Rapporteur notes that in several areas, particularly in informal Roma settlements, there have been cases of disconnection of water services in the past. Given the lack of clarity about the real reasons for disconnection, the Special Rapporteur recommends that the Government conduct official studies and surveys into the reasons for non-payment, with a view to identifying the households that are financially incapable of paying for their water and sanitation services. Furthermore, the Special Rapporteur urges Portugal to establish legal procedures to prohibit disconnection of water and sanitation services due to economic inability to pay.

D. Maximum availability of resources

71. The human rights to water and sanitation must be realized progressively, using the maximum available resources. That means that Portugal needs to make specific budget allocations for water, sanitation and hygiene, including menstrual hygiene management. Often forgotten in the human rights to water and sanitation is the cost of construction and maintenance of onsite sanitation and hygiene promotion, including menstrual hygiene management in schools and other public institutions. According to the information received from the Government, in 2015 approximately $25.9 million was available for water abstraction and distribution and $33.9 million for collection and treatment of wastewater.

72. In Portugal, the issue of ageing infrastructure is addressed in Decree-Law No. 194/2009, which obliges water services operators serving more than 30,000 inhabitants to maintain a programme for infrastructure asset management. Furthermore, the Water and Waste Services Regulation Authority recently adapted its index for measuring the implementation of strategic asset management by water and wastewater services operators with a view to better assessing how operators are dealing with ageing infrastructure.[28] Access to public funding, namely, funding from the European Union, depends on a regulatory assessment based on indicators that give high priority to infrastructure rehabilitation.[29]

73. In a decentralized structure such as the water and sanitation sector in Portugal, it is critical that the budget allocation to local authorities allows them to provide the support necessary to sustain the maintenance of water and sanitation infrastructure and to help those who cannot afford water and sanitation services. The Special Rapporteur recommends that

[27] The mandatory number of days between giving the user written notification and service interruption increased from 10 days in 2008 (Law No. 12/2008) to 20 days in 2013 (Law No. 10/2013).

[28] See "Guia técnico 21: Desenvolvimento e implementação de processos de gestão patrimonial de infraestruturas", ERSAR, Lisboa. Available from www.ersar.pt/pt/publicacoes/publicacoes-tecnicas/guias.

[29] See www.apambiente.pt/_zdata/Politicas/Agua/PlaneamentoeGestao/PENSAAR2020/PENSAAR2020_Relatorio_Vol2.pdf, p. 37.

Portugal conduct a study to analyse its own situation, particularly to assess whether the country is investing its maximum available resources to progressively realize the human rights to water and sanitation, without discrimination.

VI. Population groups in vulnerable situations

74. During the visit, the Special Rapporteur observed the situation of the Roma population and people living in informal settlements. While the majority of the Portuguese population enjoys near universal access to water and sanitation, the situation of access to water and sanitation for those groups is of great concern.

75. The Roma population was granted Portuguese citizenship under the Constitution of 1822. A significant percentage of the Roma population living in Portugal, which is estimated to be between 40,000 and 60,000 people, still has no access to basic goods and services.[30] The results of the 2011 Roma pilot survey carried out by the European Union Agency for Fundamental Rights indicate that the Roma community suffers particularly from lack of access to improved services such as piped water. While visiting Roma populations in Amadora and Vidigueira municipalities, the Special Rapporteur observed their unacceptable access to water and sanitation services, which constitutes a violation of the minimum principles of the human rights to safe drinking water and sanitation. That situation is incompatible with the progress that has taken place in the water sector in Portugal, the so-called "Portuguese miracle".

76. The Special Rapporteur emphasizes that the Government of Portugal must endeavour to close the significant gap between the proportion of Roma who have access to water and sanitation and that of the rest of the population. He notes that the National Roma Communities Integration Strategy (2013-2020) does not include any reference to drinking water and sanitation. The Special Rapporteur emphasizes that Portugal should acknowledge that its national Roma population experiences challenges in accessing drinking water and sanitation. The National Roma Communities Integration Strategy must include references to access to safe drinking water and sanitation and to the measures that need to be taken in order to ensure such access.

77. The human rights to safe drinking water and sanitation mean that all nationals must have access to drinking water and sanitation. Water and sanitation services in Portugal come under the purview of the municipal authorities. A decentralized system relying on the municipal authorities to provide water and sanitation services may face challenges relating to the fact that information is gathered at the national level, which may well lack, for instance, disaggregated information according to wealth level, migratory status, ethnic groups and other grounds of discrimination. The lack of disaggregated information may have an impact on the formulation of national policies in which individuals and communities in vulnerable situations are not included and monitored. In that context, the Special Rapporteur encourages further cooperation and exchanges of information between the central Government and the local governments.

VII. International development cooperation

78. The Special Rapporteur wishes to highlight the work of Águas de Portugal in the area of technical cooperation with developing countries. One of the missions of Águas de Portugal International is to work with developing countries, particularly Portuguese-speaking African countries, by transferring know-how, methodology and practices. Águas de Portugal International provides services at the international level in the water supply and sanitation sectors, capitalizing the know-how and technological solutions of the Águas de Portugal Group. Those services include water supply and sanitation management and operation and maintenance of infrastructures.

[30] See http://ec.europa.eu/justice/discrimination/files/roma_portugal_strategy_en.pdf, p. 13.

79. Another entity that is involved in the area of cooperation is the Portuguese Water Partnership, a network of organizations that aim to develop synergies and maximize potential for the development of the water sector in the world, promoting the construction and consolidation of alliances and partnerships between national institutions and all nations engaged in sustainable water use and enhancement of water resources. The Partnership brings together various stakeholders from water service providers, research centres, civil society, professional associations and members of scientific societies.

80. Non-State actors such as Águas de Portugal and the Portuguese Water Partnership play an important role in the area of technical cooperation in Portugal. In that connection, it is important to emphasize that even where non-State actors take an active role in development cooperation, States have an extraterritorial obligation to ensure that all standards and policy relating to technical cooperation are in line with human rights standards and guide the activities of non-State actors (see A/71/302, paras. 10-12).

VIII. Conclusion and recommendations

81. The Special Rapporteur finds that Portugal has undoubtedly achieved outstanding progress in the water and sanitation sector over the past decades, which is largely recognized worldwide. Portugal now enjoys almost near universal water coverage and the coverage of sanitation services, although at a lower rate than water services, has also shown signs of progress. There has also been an impressive improvement in the quality of drinking water and wastewater treatment. The Special Rapporteur commends all the stakeholders for that success. However, his assessment of the current situation through the human rights lens shows that the work has yet to be finished in order for the so-called "Portuguese miracle" to be complete. In that context, the Special Rapporteur notes that certain normative content of the human rights to water and sanitation are reflected in legislative and policy frameworks and are observed in regulation and service provisions in Portugal. However, he underscores that the human rights perspective includes all aspects of normative content of the human rights to water and sanitation as well as human rights principles. In that respect, he encourages Portugal to continue its efforts to implement its obligation in terms of the human rights to water and sanitation in a holistic manner. He emphasizes that realizing the human rights to water and sanitation for all Portuguese citizens, including those in vulnerable situations and residents of the autonomous regions, is a cross-cutting issue for realizing other relevant human rights.

82. In that connection, the Special Rapporteur recommends that the Government of Portugal:

(a) Improve coordination, dialogue and exchange of information between all levels of government in relation to access to water and sanitation;

(b) Adopt legal provisions that recognize the human rights to water and sanitation at the national level and in particular, recommends that the parliament approve the bill providing for legal recognition of the human rights to water and sanitation at the national level;

(c) Stipulate explicit legal provisions that oblige local authorities and the autonomous governments of Azores and Madeira to respect, protect and fulfil the human rights to water and sanitation

(d) Adopt legislative measures to prohibit disconnections of water and sanitation services owing to an inability to pay;

(e) Adopt legislative measures on affordability of access to water and sanitation services, stipulating that all individuals are provided with an affordable and reliable service that is adequate for basic human needs in the context of the national, local and autonomous government levels, reflecting the challenges people face in practice and the contexts in which they live;

(f) **Develop and undertake a comprehensive assessment of the institutional arrangements in the water and sanitation sector from a human rights perspective and take measures to ensure that current tensions in the sector do not jeopardize the realization of the human rights to water and sanitation for any of the Portuguese population;**

(g) **Incorporate the principles of equality and non-discrimination in the enjoyment of the human rights to safe drinking water and sanitation, ensuring sustainability of the services in the institutional framework of the Portuguese water sector and possible future reforms;**

(h) **Carefully monitor the processes by which concessions are granted for water and sanitation services in order to reduce the financial burden and risks for municipalities;**

(i) **Develop and issue guidelines for water and sanitation service providers concerning disconnection of water and sanitation services with a view to protecting those who are economically unable to pay for those services, and establish protection mechanisms for those groups;**

(j) **Develop a comprehensive method for disaggregation of data on water and sanitation access by wealth level, migratory status, ethnic group and other grounds of discrimination, in order to facilitate the development of focused policies for the proper protection of the populations most in need;**

(k) **Include in the National Roma Communities Integration Strategy references to access to safe drinking water and sanitation and measures that need to be taken in order to ensure such access;**

(l) **Ensure that individual solutions meet all the normative content of the human rights to water and sanitation, ensuring that individual water solutions are provided continuously and that the quality of water from wells or boreholes meets the official standards and that water from those sources is protected from different sources of contamination;**

(m) **Develop a more proactive system to disseminate information on water quality, particularly by including it on water bills, and information on existing practices, policies and resources that promote economic access to water and sanitation;**

(n) **Provide further support to local governments in relation to the construction and maintenance of individual solutions for sanitation, particularly for those who are in vulnerable situations, including people living in informal settlements and the homeless;**

(o) **Conduct official studies and surveys on the reasons behind non-payment with a view to identifying those households that are financially unable to pay for their water and sanitation services;**

(p) **Recommend that the water and sanitation providers set policies to reconcile affordability and financial sustainability as part of their financial management;**

(q) **Recommend that social tariffs for water and sanitation services are made more flexible to adapt to unforeseen situations, such as financial crises, and that the definitions of large families that are eligible for the family tariff are made more appropriate;**

(r) **Urge the Water and Waste Services Regulation Authority and the Water and Waste Services Regulation Authority for Azores to ensure that their policies, procedures and activities comply with the international human rights obligations of Portugal;**

(s) **Urge the Water and Waste Services Regulation Authority, the Ministry of the Environment and other relevant institutions to implement and monitor the automatic application of social tariffs and to conduct further studies on the criteria**

for eligibility and the level of discounts to be provided by the social tariff with more careful evaluation;

(l) Conduct studies to assess whether Portugal is investing its maximum available resources to progressively realize the human rights to water and sanitation without discrimination;

(m) Recommend that Águas de Portugal, the Empresa Portuguesa das Águas Livres and other service providers adhere to the United Nations Guiding Principles on Business and Human Rights and perform human rights due diligence in providing water and sanitation services.